WP(C) 4914/2007
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

I have heard Mr. B. Buragohain, learned counsel for the petitioner as well as Mr. N. Choudhury, learned counsel for the respondent No. 4. I have also heard Mr. R. Bora, learned State Counsel for the official respondents.

The challenge made in this writ petition is Annexure-2 order dated 1.6.2007 issued by the Chief Executive Officer, Sibsagar Zila Parishad settling the Rajmai Weekly Cattle Market for the year 2007-08 (1.7.2008 to 30.6.2008) with the respondent No. 4 at an enhanced rate of 10% to the bid value of the earlier year i.e. 2006-07.

While it is the case of the petitioner that the settlement could not have been made in violation of the provisions of the Assam Panchayat Act, 1994, it is the case of the respondent No. 4 that the Zila Parishad has settled the market with him exercising its plenary power. It is admitted at the bar that the market in question cannot be settled by way of direct settlement. It is also admitted that there is no power of extension of the period of lease.

The respondent No. 4 was the lessee for the year 2006-07. The lease period was to expire on 30.6.2007. He filed WP(C) No. 2454/2007 praying for extension of the lease period in view of the alleged lost sustained by him. The petition was disposed of by order dated 25.5.2007 providing consideration of the representation dated 18.12.2006 filed by the petitioner. The representation was to disposed of in accordance with law.

The Zila Parishad had issued NIT dated 19.4.2007 in respect of the market inviting bids from the intending parties fixing the last date of submission of bids on 8.6.2007. Even before the last date of submission of tenders, the respondent No. 4 was settled with the market by the impugned order dated 1.6.2007.

In view of the settlement made in favour of the respondent No. 4, necessarily the NIT dated 19.4.2007 has become redundant.

Once it is admitted that as per the provisions of Assam Panchayat Act, 1994, there is no power of direct settlement and/or extension of lease period, the Chief Executive Officer, Sibsagar Jila Parishad could not have issued the impugned order dated 1.6.2007. Even otherwise also, same could not have been issued even before expiry of the date, fixed for receipt of tenders i.e. 8.6.2007.

Mr. Choudhury, learned counsel for the respondent No. 4 has submits that, although the impugned order was issued on 1.6.2007, but the effect of the same was from 1.7.2007 and thus the last date fixed for receipt of tenders i.e. 8.6.2007 does not have any bearing, Mr. Buragohain, learned counsel for the petitioner submits that since the market in question cannot be settled directly, there was no option left for the Zila Parishad than to settle the same by tender process. He further submits that the tender process could not have made redundant by the Zila Parishad by issuing the impugned order dated 1.6.2007.

Mr. Bora, learned State Counsel, has produced the records pertaining to the case. The records have revealed that the respondent No. 4 has defaulted in making certain payments in respect of the earlier lease period. However, the Zila Parishad on the basis of the aforesaid order of this Court, settled the market with the respondent No. 4 by way of direct settlement. The records have further revealed that while making the settlement in favour of the respondent No. 4, he was also asked to deposit the outstanding dues. The Zila Parishad could not have settled the market with the respondent No. 4 in the above manner, more so when he is a defaulter.

As regards the direct settlement, Mr. Choudhuiry, learned counsel for the respondent No. 4 submits that although, there is no provision in the act, but the Zila Parishad is vested plenary power to make settlement as has been done in the instant case. I am of the considered opinion that exercising the plenary power and jurisdiction, the Zila Parishad cannot settle the market by way of direct settlement. If there is no provision for direct settlement and/or extension, the Zila Parishad cannot make any direct settlement or extension by exercising such purported power.

In view of the above, the writ petition is allowed. The impugned order dated 1.6.2007 is set aside and quashed. The Zila Parishad shall now settle the market in accordance with the provisions of the Act. At this stage, Mr. Choudhury, learned counsel for the respondent No. 4 has made a prayer for refund of the money deposited by the respondent No. 4. The Zila Parishad shall consider this aspect of the matter in accordance with law.

Once the Zila Parishad had decided to run the market departmentally. Since the impugned order is set aside, in the interim i.e. till settlement of the market by tender process, same may be run by the Zila Parishad in accordance with law.

Writ petition is allowed to the extent indicated above. No costs.